IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.573 OF 1991

Shri Bapu Lakhu Kadam,

r/o Padal, Taluka Panhala,

District-Kolhapur. .. Petitioner

(Tenant)

Vs

1. Smt.Gajarabai w/o Baburao Powar,

D/H -

1.Shri Vilas Baburao Powar and ors. .. Respondents-

(Landlord)

Mr M.R.Suryavanshi, for the petitioner.

Mr P.R.Patil, for the respondents.

CORAM : D.B.BHOSALE,J.

DATE : 4th October, 2004.

ORAL ORDER :

1. This petition under Article 227 of the Constitution of India is directed against the Judgment and order dated 29.10.1990 rendered by the Maharashtra Revenue Tribunal by which the petitioner's revision has been dismissed and the orders passed by the authorities below have been confirmed. The respondent-landlord's

application under sections 14, 25(2) and 29(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "the Act") seeking possession on the ground of default in payment of rent has been allowed by the impugned judgments passed by the authorities below.

2. Since, admittedly, the land in question was under cultivation of sugarcane, the provisions of section 32 to 32R were not applicable, as contemplated under section 43A of the Act and in view thereof the proceedings under section 32G were not initiated. On 22.2.1973, the respondent-landlord filed an application under sections 14 and 25(2) read with 29 of the Act seeking possession of the suit land on the ground of default in payment of rent committed by the petitioner-tenant. The application was numbered as Tenancy Case No.8 of 1973. There was a compromise between the tenant and the landlord on 27.7.1973 and, on 10.8.1973 the Tahasildar passed an order under section 25(1) of the Act directing the tenant to tender to the landlord the rent in arrears within three months therefrom, making it clear that on his failure to pay the rent, he would be evicted from the suit land as per the provisions of section 25(1) of the Act. Since the tenant failed to pay the rent in pursuance of the order dated 10.8.1973, the landlord, on 28.8.1974, filed the

application seeking possession of the land in pursuance of the said order. No orders were passed in the said application. Hence, another application was filed by the landlord on 1.1.1987 in pursuance of which Tenancy Case No.8 of 1973 was reopened by the Tahasildar in which the orders impugned came to be passed.

3. It is against this backdrop of the facts, I heard the learned counsel for both the parties for quite some time, perused the impugned judgments and orders passed by the authorities below and other material placed for my consideration. Mr Suryawanshi, learned counsel for the petitioner, at the outset, submitted that the Tahasildar had no jurisdiction to re-open the case which was decided by him in 1973. The order passed on 10.8.1973 was a consent order and, therefore, the provisions of section 25(1) of the Act would not apply to the facts of the present case. It was wrong on the part of the authorities below to treat the order dated 10.8.1973 as an order under subsection (1) of section 25 of the Act and pass the order of ejectment from the suit land. In so far as the application dated 1.1.1987 is concerned, Mr Suryawanshi submitted that the said application was hopelessly time barred since it was filed beyond a period of two years from the date on which the right to obtain possession of the land was

accrued to the landlord, as contemplated under subsection (2) of section 29 of the Act. He further submitted that the landlord had not proved that the tenant failed to pay the rent in pursuance of the order dated 10.8 1973. On the other hand, Mr Patil, learned counsel for the respondents, took me through the provisions of section 25(1) of the Act and contended that the order impugned, was, in fact, passed in the application filed on 22.2.1973 itself by which the tenant was given liberty to tender to the landlord the rent in arrears. There was no need of filing a separate application. He further submitted that even if it is assumed that such application was necessary, the landlord filed such application on 28.8.1974 itself which was well within time as required under subsection (2) of section 29 of the Act. He lastly submitted that the High Court, in exercise of its power under Article 227 of the Constitution of India cannot function as the Court of appeal and is generally bound by the findings of fact recorded by the tribunal below unless they are perverse. In the present case, the petitioner has miserably failed to make out a case for interference in the concurrent findings of fact recorded by the authorities below.

4. Under section 14 of the Act, the landlord is

empowered to terminate the tenancy for default of tenant. It provides that the tenancy of any land shall not be terminated unless the tenant has failed to pay the rent for any revenue year before 31st day of May thereof; or has done any act which is destructive or permanently injurious to the land; has sub-divided, sublet or assigned the land in contravention of section 27; has failed to cultivate it personally; or has used land for a purpose other than agricultural or allied pursuits. Clause (b) of sub-section (1) of section 14 provides that the tenancy of any land shall not be terminated unless the landlord has given three months' notice in writing informing the tenant of his decision to terminate the tenancy and the ground for such termination, and within that period the tenant has failed to remedy the breach for which the tenancy is liable to be terminated. In the present case, we are not concerned with sub-section (2) of section 14. Section 25 of the Act speaks about the relief against termination of tenancy for nonpayment of rent. It provides that where any tenancy of any land held by any tenant is terminated for nonpayment of rent and the landlord files any proceedings to eject the tenant, the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the costs of the proceedings within three months from the date of

order, and if the tenant complies with such order, the Mamlatdar shall, in lieu of making an order for ejectment, pass an order directing that the tenancy had not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated. Proviso appended to sub-section (1) of section 25 empowers the Mamlatdar to grant further time in a situation as contemplated in the proviso. In the present petition, we are not concerned with the proviso appended to sub-section (1) and sub-section (2) of Section 25 inasmuch as we are concerned only with sub-section (1) of section 25. Section 29 of the Act provides procedure for taking possession. Under this provision, the landlord has to apply for possession of land within a period of two years from the date on which the right to obtain possession of the land is deemed to have accrued to the tenant,agricultural labourer or artisan, as the case may be. It further provides the procedure that the Mamlatdar is required to follow before passing an order of possession.

5. Keeping these provisions in view, I examined the question involved in the instant case as to whether the landlord is entitled for possession of the land in question on the ground of arrears of rent which the tenant allegedly failed to tender after the order dated

10.8.1973 passed by the Mamlatdar under subsection (1) of section 25 of the Act. Since the question as to the termination of tenancy for nonpayment of rent was neither raised by the learned counsel for the petitioner nor the petitioner challenged the termination of tenancy for nonpayment of rent I need not address in the instant judgment as to whether the termination of tenancy for default of tenant was legal and valid as contemplated under the provisions of section 14 of the Act. I take it that the termination of tenancy for default was legal and in accordance with the provisions of section 14 of the Act.

6. The application filed by the landlord dated 22.2.1973 was filed under sections 14,25(2) and 29(2) of the Act. It appears that, in the said proceedings, there was a compromise between the tenant and the landlord on 27.7.1973 and in pursuance thereof the Tahasildar had given three months time to the tenant to tender Rs.1500/- as arrears of rent to the landlord. The tenant had given in writing that if he fails to deposit the rent within three months he would not have an objection for his ejectment from the land and for handing it over to the landlord. Sub-section (1) of section 25 provides that if the tenant tenders the rent within three months the Mamlatdar cannot pass an order

of ejectment and in fact is expected to pass an order directing that the tenancy has not been terminated and thereupon the tenant shall hold the land as if the tenancy has not been terminated. Sub-section (1) of section 25 does not contemplate filing of a fresh application by the landlord in the event the tenant fails to tender to the landlord the rent in arrears within three months from the date of order. The landlord is at the most only expected to bring it to the notice of the Mamlatdar that there is failure on the part of the tenant to comply with the order passed under sub section (1) of section 25 and if there is any dispute, may record his finding after allowing the parties to lead evidence in support of their claim and pass final orders. No separate application under sub-section (1) of section 25 is necessary in the event of tenant's failure to deposit rent within three months. The order of ejectment can be passed in the very proceedings in which the order under sub section (1) of section 25 is passed by the Mamlatdar and three months time is given to clear the arrears.

6.1 In the instant case, the applications dated 28.8.1974 and 1.1.1987 filed by the landlord were only requesting the Mamlatdar to reopen the proceedings bearing Tenancy Case No.8 of 1973. Both these

applications clearly show that they were not filed under sections 25(1) and 29 of the Act. By those applications the landlord had only invited the attention of the Mamlatdar to the fact that the tenant failed to comply with the order dated 10.8.1973 passed under sub section (1) of section 25. In the circumstances, the question of limitation as contended by Mr Suryawanshi has to be answered in negative.

6.2 In so far as the contention urged by Mr Sawant that the order dated 10.8.1973 was an order in terms of the consent terms and, therefore, the provisions of section 25(1) would not apply to the facts of the present case is concerned, it would not be possible for me to accept his submission in view of the fact that the order that was passed by the ALT dated 10.8.1973 was passed under section 25 (1), thereby, giving relief to the tenant against termination of tenancy for nonpayment of rent. The tenant himself had given in writing that if he fails to deposit the rent within three months as contemplated under sub-section (1) of section 25, he would not have any objection for withdrawal of his land from his possession and putting the landlord in possession thereof. I have no hesitation in holding that the order dated 10.8.1973 passed by the Mamlatdar was under sub-section (1) of section 25.

7. This takes me to consider the next submission of

Mr.Surayawanshi that in fact the tenant had tendered the rent within three months after the order of Mamlatdar dated 10.8.1973. The tenant claims that the rent was tendered to the landlord through one Vilasrao Jamdar. Vilasrao Jamdar was examined as witness in the case. He does not support the tenant. In fact, he has categorically stated that the tenant did not tender the rent to the landlord. Considering his evidence and other material placed on record, all the authorities below concurrently held that the rent was not tendered by the tenant to the landlord after the order of Mamlatdar dated 10.8.1973. In the circumstances, this submission of Mr.Surayawanshi also deserves to be rejected. I am satisfied that after the order of Mamlatdar dated 10.8.1973, the tenant failed to tender the rent to the landlord within three months as contemplated under subsection (1) of section 25 of the Act. Therefore, the Tribunal has rightly rejected the application and confirmed the orders of the authorities below by which the application of the landlord seeking possession under section 25(1) of the Act has been allowed.

8. In the result, the writ petition fails and is dismissed as such. Rule stands discharged. No costs.

(D.B.Bhosale,J.)